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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,156	08/22/2003	Bruce Young	P1898US00	9592
32709	7590	07/31/2007	EXAMINER	
Gateway Inc			SIDDIQI, MOHAMMAD A	
Patent Attorney			ART UNIT	PAPER NUMBER
PO Box 2000			2154	
N. Sioux City, SD 57049				
MAIL DATE		DELIVERY MODE		
07/31/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/646,156	YOUNG, BRUCE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mohammad A. Siddiqi	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 August 2003.

2a) This action is **FINAL**.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 08/22/2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date  
06/14/2006, 11/14/2003, 08/22/2003.

**DETAILED ACTION**

1. Claims 1-18 are presented for examination.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) filed on 06/14/2006, 11/14/2003, and 08/22/2003 has been considered by the examiner.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claims raises a question as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful and tangible result. The various steps transmitting, receiving, and delivering are

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software constructs (software per se) performing various functionalities.

These functionalities do not manipulate any hardware or tangible entity.

Therefore, these software constructs are non statutory entities as detailed in MPEP 2106.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Drosset et al. (6,662,231) (hereinafter Drosset).

7. As per claims 1 and 7, Drosset discloses a method and system for distributing content, comprising:

transmitting content in a streaming content format (MP3, col 2, lines 38-52; col 4, lines 44-52);

receiving a request to store a particular piece of the content (download audio data files, col 2, lines 38-52); and

delivering said particular piece of the content in an archival format to a storage media of a user when request to store said particular piece of the content is received (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format);

wherein said streaming content format prevents storage of the content (col 5, line 65 to col 6, line 10);

wherein said archival format allows storage of the content (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format); and

wherein said request and delivering of the particular piece of the content in said archival format occurs in real-time of transmission of the content in said streaming content format (MP3, col 2, lines 38-52, col 3, lines 20-34; col 21, lines 35-40).

8. As per claims 2 and 8, Drosset discloses streaming content format is copy protected (col 2, lines 45-52; col 3, lines 20-34, MP3 format).

9. As per claims 3 and 9, Drosset discloses archival format is copy protected (col 2, lines 45-52; col 3, lines 20-34, MP3 format).

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10. As per claims 4 and 10, Drosset discloses authorizing a payment for said request to store said particular piece of the content (col 2, lines 38-52).

11. As per claim 5, Drosset discloses authorizing said payment for said request includes debiting a charge against a prepayment for the content (col 2, lines 38-52).

12. As per claims 6 and 11, Drosset discloses the content transmitted in said streaming content format is in conformity with a list of preferences of said user (customized playlists, col 2, lines 44-46).

13. As per claim 12, Drosset discloses a method for distributing content, comprising:

retrieving a list of preferences of a particular user (customized playlists, col 6, line 51 to col 7, line 49);

transmitting content in conformity with said list of preferences in a streaming content format to said particular user (MP3, col 2, lines 38-52; col 4, lines 44-52);

receiving a request to store a particular piece of the content (download audio data files, col 2, lines 38-52); and

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delivering the particular piece of content in an archival format to a storage media of said particular user when said request to store said particular piece of the content is received (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format);

wherein said streaming content format prevents storage of the content (col 5, line 65 to col 6, line 10);

wherein said archival format allows storage of the content (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format); and

wherein said request and delivering of the particular piece of the content in said archival format occurs in real-time of transmission of the content in said streaming content format (MP3, col 2, lines 38-52, col 3, lines 20-34; col 21, lines 35-40).

14. As per claim 13, Drosset discloses streaming content format is copy protected (col 2, lines 45-52; col 3, lines 20-34, MP3 format).

15. As per claim 14, Drosset discloses archival format is copy protected (col 2, lines 45-52; col 3, lines 20-34, MP3 format)..

16. As per claim 15, Drosset discloses authorizing a payment for said request to store said particular piece of the content (col 2, lines 44-59).

17. As per claim 16, Drosset discloses authorizing said payment for said request includes debiting a charge against a prepayment for the content (col 2, lines 45-59;).

18. As per claim 17, Drosset discloses particular piece of the content is a song (audio data file, col 2, lines 45-52).

19. As per claim 18, Drosset discloses archival format includes MP3 format (col 2, lines 45-52; col 3, lines 20-34, MP3 format).

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Following patents delivers audio content in MP3 format to the subscribers.

U.S. Patent 6,407,680

U.S. Patent 6,496,802

U.S. Patent 7,159,235

US 2001/0039572

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammad A. Siddiqi whose telephone number is (571) 272-3976. The examiner can normally be reached on Monday -Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAS



NATHAN LYNN  
SUPERVISORY PATENT EXAMINER